

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Application of : **HAYARDENY et al.**

Serial No. : 10/673,733 : Group Art Unit: 2161
Filed : September 29, 2003 : Examiner: Paul Kim
For : STORAGE DISASTER RECOVERY USING A PREDICTED
SUPERSET OF UNHARDENED PRIMARY DATA

November 19, 2007

RESPONSE TO OFFICIAL ACTION

Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

INTRODUCTORY COMMENTS

Sir:

In response to an Official Action dated September 7, 2007, Applicant respectfully submits the following remarks. This application contains claims 1-17, 19-37, 39-57, 59 and 60, all of which were rejected in the Official Action. Reconsideration is respectfully requested in view of the remarks that follow.

Claims 1-12, 18-32, 38-52 and 58-60 were rejected under 35 U.S.C. 103(a) over Yanai et al. (U.S. Patent

5,742,792) in view of Tummala et al. (U.S. Patent 7,035,881). Following the cancellation of claims 18, 38 and 58 in a previous amendment, the rejection of these claims is moot. Applicants respectfully traverse the rejection of the remaining claims on the grounds that they conceived the present invention prior to the filing date of Tummala (September 23, 2003) and were diligent in constructive reduction of the invention to practice between September 23, 2003, and September 29, 2003, when the present patent application was filed.

In response to a previous Official Action in this case, Applicants submitted a declaration under 37 C.F.R. 1.131 on January 3, 2007, proving that they conceived their invention prior to August 29, 2007, and were diligent in constructive reduction to practice between that date and September 29, 2003. The declaration is on file in the Patent Office and was accepted by the Examiner without objection. On the basis of this declaration, Tummala is disqualified as prior art against the claims in the present patent application. Therefore, claims 1-12, 19-32, 39-52, 59 and 60 are patentable over the cited art.

Dependent claims 13-17, 33-37 and 53-57 were rejected under 35 U.S.C. 103(a) over Yanai in view of Tummala and further in view of Dunham (U.S. Patent 6,269,431) and, with respect to some of the claims, further in view of official notice. In view of the patentability of the independent claims, as explained above, these dependent claims are believed to be patentable, as well.

Applicants believe the remarks presented above to be fully responsive to all of the grounds of rejection raised by the Examiner. In view of these remarks, all of the claims now pending in this application are believed to be in condition for allowance. Prompt notice to this effect is requested.

Please charge any fees associated with this response
to Deposit Account 09-0468.

Respectfully submitted,

By: /Suzanne Erez/
Suzanne Erez
Reg. No. 46,688
Phone No. (972) 4-829-6069

Date: 19 November 2007
IBM Corporation
Intellectual Property Law Dept.
P. O. Box 218
Yorktown Heights, New York 10598